BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of:	)	
	)	
Leased Commercial Access	)	
	)	
Development of Competition and Diversity	)	MB Docket 07-42
Video Programming Distribution and Carriage	)	FCC 18-80
	)	
Modernization of Media Regulation Initiative	)	MB Docket 17-105

To: The Commission

Comments of Leased Access Programmers Association

These comments in the above-referenced proceeding are submitted by Duane Polich, on behalf of the Leased Access Programmers Association ("LAPA") in his role as Vice President. LAPA is a national trade organization dedicated to the promotion of the use of leased commercial access as a genuine outlet for video programming ("programmers), by working with the FCC and the cable companies to implement the intentions (and in the manner it intended) of Congress when it established leased access with the passage of the Cable Communications Policy Act of 1984, and the addition of Section 612 to the Communications Act of 1934 and as amended in 1992.

The stated purpose of the leased access statute is generally agreed to be "is to promote competition in the delivery of diverse sources of video programming and to assure that the widest possible diversity is made available to the public from cable systems in a manner consistent with growth and development of cable systems. "The statute also specifies that the price, terms, and conditions for commercial leased access should be "at least sufficient to assure that such use will not adversely affect the operation, financial condition, or market development of the cable system."

While we applaud the initiative of the Commission to finally move forward and come to some sort of resolution of the stayed 2008 Leased Access Order, we do not feel that it is absolutely necessary to throw the baby out with the bathwater and vacate the entire order and start afresh. Rather we suggest that the Commission move forward with those parts of the 2008 Leased Access Rules that are not subject to the objection of the OMB due to burdensome paperwork requirements, nor are subject to the scrutiny or concerns of the Sixth Circuit Court of Appeals when it issued its stay order. Then the Commission should then look into whether those parts that raised objections or concerns could be modified to "reach a balance of best interest of leased access users and the cable companies".

We note that the Commission make-up at the time that the 2008 Leased Access Order was adopted consisted of Chairman Kevin Martin, Commissioner Jonathan Adelstein, Commissioner Michael J. Copps, Commissioner Robert McDowell and Commissioner Deborah Taylor Tate. The Leased Access Order was championed by Commissioner Adelstein and Chairman Martin in the spirit of carrying out the intentions of Congress when it adopted the Leased Access Policy. The reasonings and issues that drove Chairman Martin and the Commission to pursue such an order remain true today as it was true back then.

Let's look at the Statement of Jonathan Adelstein after the adoption of this order.

"I am pleased to support this item which deals with the Commission's commercial leased access rules.

When I requested that we launch this proceeding to reform the current leased access regime, I did so for two reasons. First, I had heard that many small and independent creators of local and diverse programming could not gain access to and carriage on their local cable systems. And second, while Congress explicitly required the Commission to ensure that leased access opportunities remain available and viable, our rules and practices over the years have made leased access unnecessarily burdensome and, in some instances, prohibitively expensive for many independent programmers.

I am, therefore, pleased that the instant Order addresses these problems. As the initiator of this proceeding, I would like to thank my colleagues for supporting this thoughtful item. I particularly would like to thank Chairman Martin for heeding my request and following through on our agreement in the Adelphia transaction to bring this proceeding to a final order. Given that the Commission's experience with managing leasing arrangements in media is limited to commercial cable leased access, the rules we consider and implement here today should set the baseline standard for any other media leasing arrangement contemplated by the Commission.

Today's Order makes remarkable improvements to our commercial cable leased access rules. We first adopt uniform customer service standards to remedy the lack of a consistent and fair treatment of actual and interested leased access programmers. We then reduce the potential expense and burden on a programmer associated with filing a complaint with the Commission about an alleged violation. To ensure that we better monitor leased access practices and the effects of our rules, we adopt an annual reporting *requirement for cable operators and we invite leased access programmers to comment on the information provided by cable operators.*

As the underlying record shows, the inconsistent and unpredictable treatment of leased access programmers has impeded their ability to lease cable channels. Considering that many part-time leased programmers are small, community-based operations, the difficulty to obtain basic information about leased access opportunities can create an unnecessary barrier of entry. I believe that the Commission must take appropriate steps to facilitate the entry of new and diverse programmers in a manner that has been specifically authorized by Congress.

Leased access programmers should be able to request and then obtain information about rates, terms and conditions in a timely manner. Today, we reaffirm that cable operators have an obligation to reasonably accommodate these requests. Accordingly, we conclude that within three business days of an initial inquiry, a cable operator must provide the prospective leased access programmer with information about, for example, the leased access process and procedures for that specific cable system, the availability of time and leased access channels, the attendant schedule and calculation of rates, and the acceptable methods of delivering leased access programming to the cable operator.

Providing this information to prospective leased programmers does not impose an undue burden on cable operators. In fact, I believe that the service standards we adopt today should simplify the entire leasing process, as all leased access inquires will be treated in a predictable and timely manner. The new and clear standards will set the expectations of prospective and current leased access programmers, and cable operators. Moreover, the information that programmers receive after their initial inquiry should empower them with sufficient information to determine whether commercial leasing is an opportunity worth pursuing.

In addition to new consumer service standards, I believe this Order improves the complaint process in certain important respects. As I said in the underlying Notice of Proposed Rule Making, "there will always be good faith disputes between cable operators and programmers, [but] the Commission does not have mechanisms in place to ensure prompt resolution of complaints. It should not take the Media Bureau nearly two years to respond to a programmer's leased access complaint. " Hence, pursuant to this Order, we will codify a rule that requires the Media Bureau to resolve all leased access complaints within 90 days of the close of the pleading cycle, which requires the respondent to reply to a complaint within 30 days. Also, we reduce the expense of filing a complaint by eliminating the requirement for a complainant to obtain a determination of the cable operator's maximum permitted rate from an independent accountant before filing a complaint alleging a rate violation. Finally, the expanded discovery rules we adopt in this Order will enable leased access programmers to support complaints of alleged rule violations or unfair treatment.

While I am pleased with the outcome of this Order, I would have preferred that we first solicited meaningful public comment and review on the new rate methodology adopted here. To be frank, the methodology was invented by staff out of whole cloth without sufficient public input, independent review or any transparency. I received much of the details only late last week, right before the Thanksgiving holiday and right after Sunshine closed. As with any new pricing formula, its reliability and accuracy are directly correlated to the extent to which it has undergone rigorous examination and independent review. To my knowledge, neither has occurred in this case. Indeed, good government cautions us to seek comment before adopting a new, industry price regulation. All stakeholders have a right to see and comment on the specific formula on which we intend to rely. To be sure, I actually like the outcome – a maximum leased access rate of 10 cents per subscriber per month for any cable system. But as an expert governmental agency, it is incumbent upon us to provide regulatees with a process that is fair and open and inspires confidence in the American people and the courts.

I am, however, satisfied that we do not apply this new rate methodology on programmers that predominately transmit sales presentations or program length commercials, but rather seek comment on these issues. It is also appropriate that we provide a 90-day delay in the effective date of the new formula so that all parties can have the opportunity to inform us of any concerns or file petitions for reconsideration. This remedies the deficient notice sufficiently for me to support the item.

I am thankful to my fellow Commissioners and Chairman Martin for ensuring that this item was finalized within a reasonable period of time. I also want to thank the commenters for offering real solutions to this process and providing insight needed to ascertain the breadth of this item and the intricacies of how the process should work. I am hopeful that this Order today will help us reach both Congress' and our goal in having more diverse cable programming."

Then let us review the statement of Chairman Kevin Martin:

"The item we adopt today significantly reforms the Commission's leased access rules. I believe it is important for the Commission to foster the development of independent channels, including those owned by minorities and women. By adopting an expedited complaint process and a more rational method for determining leased access rates, we take steps to make it easier for independent programmers to reach local audiences.

Section 612 of the Communications Act requires the Commission to promote "competition in the delivery of diverse sources of video programming." Unfortunately, however, our existing leased access rules were simply not achieving their intended purpose. For example, the Commission's most recent cable price survey found that cable systems on average carry only .7 leased access channels. The record suggests that the leased access regime has been extremely underutilized because of artificially high rates. Our order, therefore, is designed to increase the use of leased access channels and thereby enhance the diversity of programming.

I believe that the actions we take today will go a long way to accomplishing the twin goals of competition and diversity articulated in section 612 of the Act. I look forward to continuing to work with my colleagues to adopt other policies that are designed to ensure that independent voices are heard."

Then let's look at the Statement of Michael J. Copps:

"The express statutory purpose of leased access is to give independent programmers an opportunity to obtain cable carriage at reasonable rates in order to promote competition and "the widest possible diversity of information sources." Thus, Congress intended leased access to contribute to the diversity of voices that is so central to the proper functioning of our media and, ultimately, to our democracy itself.

Unfortunately, those purposes have rarely been realized. In our most recent annual cable price survey, the Commission found that cable systems on average carry only 0.7 leased access channels. This Order tries to remove several obstacles that may be hindering the use of leased access capacity, including clarifying the information that cable operators must be prepared to provide in response to inquiries and the time in which it must be provided.

Another obstacle cited by independent programmers is excessive rates. The Order adopts a new methodology that will lower the rates and make them more affordable. One important caveat is that we do not yet extend the lower rate to programmers that carry primarily sales presentations and program length commercials. These programmers often "pay" for carriage -- either directly or through some form of revenue sharing with the cable operator. Lowering the rates for these programmers could cause them to simply migrate to leased access from elsewhere on the cable system because it is less expensive than their current commercial arrangements. Migrating from one part of the cable platform to another would not increase programming diversity. I thank my colleagues for their willingness to examine this issue in a Further Notice.

Finally, while I am generally in favor of ensuring that complainants at the Commission have the information they need to prove their case, as in the recent program access proceeding, I believe that the discovery procedures adopted in this item go too far, and, paradoxically, not far enough. They go too far in establishing a bare "relevance and control" standard for discovery requests with no apparent limits on requests that are duplicative or unduly burdensome. I fear that these rules will embroil the Commission in an endless stream of discovery disputes. On the other hand, I believe the decision does not go far enough because if we are going to liberalize our discovery rules, it ought to apply to other contexts – such as cases dealing with petitions to deny broadcast station license renewals and transfers. I hope that parties in other disputes file waivers with the Commission asking for liberalized discovery. If sunshine is the best disinfectant, we ought to let the sun shine into every nook and cranny of the Commission.

I thank the Bureau for their work on this complex subject, and hope that the rules we adopt will help at long last to turn leased access into a viable and diverse outlet for independent programming."

The Statement of Robert M. McDowell who dissented.

"Rather few programmers have sought carriage on cable systems through leased access, which was designed by Congress in 1984 to bring about the diversity of information sources. By all accounts, there are two primary reasons that leased access has not been more successful. First, leased access may not be economically viable for the vast majority of programmers. Outside of leased access, cable operators generally pay programmers per-subscriber fees for the programming they choose to carry. Those programmers rely on these fees, as well as advertising revenues, to generate enough revenue to develop programming for a full-time channel. Leased access programmers, however, must pay cable operators for access to channels. Therefore, the economics of leasing result in limited use by traditional, full-time programmers. The record indicates that generally, part-time programmers producing home shopping content, infomercials, adult content and, ironically, certain types of religious programs are attracted to this business model because they have other means of generating revenue from their viewers. Leased access channels are also used full-time by low-power broadcast stations, which transmit their programming over-the-air but do not have must-carry rights for cable carriage.

Secondly, outside of the leased access regime, the marketplace has generated an incredible amount of programming diversity as more programmers have created compelling content from all different genres of entertainment, news, sports and, culture and gained cable carriage through negotiated deals. Competition has transformed the amount and content of program offerings available to cable subscribers to a degree not envisioned in 1984.

Against this backdrop, the majority today attempts to transform leased access into something that economic reality has shown it cannot be: a viable business model for independent and niche programmers to obtain distribution for their channels. The majority lowers leased access rates dramatically, in contravention of both the law and prior Commission findings. Congress mandated that any leased access rate we establish must be "at least sufficient to assure that such use will not adversely affect the operation, financial condition, or market development of the cable system." Congress also required that cable systems set aside public, educational and governmental access channels for free to the users. Congress, however, did not intend that cable operators subsidize commercial leased access users.

Moreover, the Commission developed the current "average implicit fee" methodology in 1997 after an extensive review of the economic studies and policy discussions submitted at *that time. The record in this proceeding and our consideration of it do not come close to reaching that level of careful analysis. The least we could have done was to seek comment on any changes to the current rate formula. This Order even fails to do that. The result of this radical change in rates, as many independent programmers have stated in the record, will be the opposite of what is intended. The result will be a loss in the diversity of programming as cable operators are forced to drop lesser-rated channels in favor of a flood of leased access requests seeking distribution distorted below cost and market rates.*

Perhaps to ameliorate this result, the majority concludes that the new rate methodology will not apply to programmers that predominantly transmit sales presentations, or program-length commercials, and seeks additional public comment on related issues. This too is extremely problematic. I cannot fathom how distinguishing programmers based on the content they deliver can be constitutional. Perhaps the courts will guide us.

The majority goes on to: adopt "customer service standards," expedite our process for adjudicating complaints, expand discovery, and require reporting of statistics – all additional regulations aimed at propping up a regulatory regime that is past its prime. I sympathize with programmers, particularly Class A television stations, who struggle for distribution. I also am concerned about programmers "getting the run-around" or being otherwise dissuaded from leasing cable channels. I strongly encourage cable operators to make their leased access rates and terms available to programmers who request information as expeditiously and transparently as possible. The rules set forth in this Order, however, go far beyond what is needed.

Accordingly, I respectfully dissent to this Report and Order."

And finally the Statement of Deborah Taylor Tate who also dissented:

"Allowing programmers to lease time on cable channels is yet another way the FCC encourages program diversity and the dissemination of a variety of viewpoints. It also allows local programmers to have access to cable's audience for the promotion of products and services, as well as the airing of local community events. We appreciate the cooperation of cable operators in making these channels available. In light of the concerns that have been raised with regard to the prices charged by cable for the use of these channels, I believe we should seek comment on whether our maximum allowable rate should be changed from the average implicit fee to the marginal implicit fee. Just as we did in 1996, when we initially lowered the maximum allowable rate for carriage, we should ask that interested parties analyze the advantages and disadvantages of this new rate formula. We should also seek input on whether lowering the maximum allowable rate will increase the number of leased access programmers on cable's systems. Because we fail to seek comment on these important changes, I respectfully dissent."

These Statements of the Commissioners issued after the adoption of the 2008 Leased Access Order, provide a summary of the record of the then MB Docket 07-42 proceeding, the thoughts and reasoning that went into this order and why it was adopted. There are some common themes that are relevant to the current and expanded MB Docket 07-42 proceeding.

The concerns of the supporters of the order were.

1. That many small and independent creators of local and diverse programming could not gain access to carriage on their local cable systems.

2. That the rules and practices (of the Commission) over the years have made leased access unnecessarily burdensome and in some instances prohibitively expensive for many independent programmers.

To resolve that they adopted 1. Uniform customer service standards to remedy the lack of a consistent and fair treatment of actual and interested leased access programmers by requiring minimal standards and equal treatment of leased access programmers with other programmers. 2. Eliminated the requirement for an independent accountant to review leased access rates 3. Established annual reporting requirements of leased access statistics. 4. Attempted to reduce the potential expense and burden on a programmer associated with filing a complaint, by modifying the discovery process. 5. Expedited the timeframe for the Commission to resolve leased access complaints and 6. Modified the leased access rate formula, by adopting a new rate methodology. All in all, well-intentioned to encourage the use of leased access and make it more accessible to independent programmers. Perhaps it was in the manner in how they went about it, which caused the disapproval of the OMB and the wrath of the Sixth Circuit Court of Appeals.

Let's review the Customer Service Standards.

"In this Order, we adopt uniform customer service standards to address the treatment of leased access programmers and potential leased access programmers by cable system operators. In order to make the leased access process more efficient, we adopt new customer standards, in addition to the existing standards. These standard are designed to ensure that leased access programmers are not discouraged from pursuing their statutory rights to the designated commercial leased access channels, to facilitate communication of these rights and obligations to potential programmers, and to ensure a smooth process for gaining information about a cable system's available channels. We require cable system operators to maintain a contact name, telephone number and an e-mail address on its website, and make available by telephone, a designated person to respond to requests for information about leased access channels We also require cable operators to maintain a brief explanation of the leased access statute and regulation on its website. Within 3 business days of a request for information, a cable system shall provide the prospective leased access programmers with the following information: 1. The process for requesting leased access channels. 2. The geographic levels of service that are technically possible. 3. The number, location and time periods available for each leased access channel. 4.Whether the leased access channel is currently occupied. 5. A complete schedule of the operator's statutory maximum part-time and full-time leased access rates. 6. A comprehensive schedule showing how these rates were calculated. 7. Rates associated with technical and studio costs. 8. Electronic programming guide information. The available methods of programming delivery and the instructions, technical requirements and cost for each method. 10. A comprehensive sample leased access contract that contains uniform terms and conditions, insurance requirements, length of the contract, termination provisions and electronic guide availability. 11. Information regarding prospective launch dates for the leased access programming. In addition to the customer service standards, we adopt penalties for ensuring compliance with these standards. We emphasize that the leased access customer service standards herein are "minimum" standards."

In other words, the Commission expected the cable operators to clean up their act. Some of these new customer service standards did not meet the approval of the OMB, most likely because of the timeframe required and in some of the addition of paperwork required to be submitted by the cable companies.

LAPA takes the position that it is important, that the Commission do(es) adopt some sort of expected customer service standards for cable operators in responding for leased access information and requests. Prospective leased access programmers need to be provided certain information before it can make a decision on the feasibility of requesting leased access carriage on a particular system(s).

We do not feel that is a burden that the cable system maintains on its website (or a website dedicated to providing such information a contact name, telephone number, and e-mail of an individual designated by the cable system operator to respond to requests for information about leased access channels. "One of the more basic elements necessary to permit potential leased access programmers reasonable access to cable systems is the ready availability of such information". All businesses have someone that can answer questions about the services or products they sell or provide. A prospective user should not have to expend considerable time tracking down this information.

Some of the information that the new service standards require the cable company to provide could also be posted on the website, such as the process for requesting leased access channels, the geographic levels of service that are technically possible (more on this later), the number and location and time periods available for each leased access channel, whether the leased access channel is currently occupied and how to request an additional channel, rates associated with technical and studio costs, electronic guide availability and information concerning respective launch dates. It would not be too difficult to put this information in a leased access guide/primer in a .pdf format which could be e-mailed out to prospective leased access users. We are aware that cable companies may own a number of systems throughout the country and that posting information about every single system may be difficult. If the information is provided by some sort of state, region or zone that should be sufficient.

When a bona fide request is submitted, the cable operator should provide a comprehensive sample leased access contract which includes uniform terms and conditions such as tier and channel placement, contract terms and conditions, insurance requirements, length of the contract, termination provisions and electronic guide availability. Again this information could be put into a .pdf document and e-mailed to the requestor. Perhaps the cable system should be given more than three days to provide this information. We suggest a period of 15 days, especially if the information is to be e-mailed. So, again we suggest that the Commission adopt minimum customer service standards. Those listed in the 2008 order are a good place to start. For those parts that did not meet the OMB approval, the Commission should look into or seek comment on how they can be modified or relaxed in order to meet such OMB approval. And if any part is determined beneficial the Commission should override the OMB objections, as it seems it has the power to do.

One of the customer service standards that has been overlooked in the 2008 Order is the Geographic Levels of Service that Are Technically Possible. It is imperative that the Commission keep and adopt this requirement in all or some form. Back when commercial leased access was established, cable systems would serve a specific city, town, county or other political subdivision and would have been granted a franchise by such political authority. The system would use a headend to gather and distribute its programming over the various channels. Due to consolidation, standardization, technology, etc. that headend grew to service several communities, counties, political subdivisions, etc. possibly over a wide area. The headend could be associated with a number of franchises. Since leased access originates from the headend, cable systems used this excuse to limit the area where it had to provide leased access. Forcing a prospective programmer to leased a channel over a wide area, making it prohibitively expensive, when that programmer wanted to leased on a more local basis. This seriously inhibits local community oriented programming to cities, towns or even counties. The 2008 rules provided that the Commission "will not require, at this time, the operator to allow the leased access programmer to serve discrete communities smaller than the headend if they are not doing the same with other programmers" We interpret this to include PEG channel and local origination channels.

The order goes on to say "We will monitor developments in this area, and may revisit this issue if the circumstances warrant. However, we will require cable system operators to clearly set out in their responses to programmers what geographic and subscriber levels of service they offer". The order also goes on to say " With regard to non-monetary terms and conditions, such as channel and tier placement, targeted programming, (etc.) we similarly require the cable operator to provide, along with its standard leased access contract, an explanation, and justification of its policy. For example, with regard to the geographic scope of the carriage, if a leased access programmer request to have its programming targeted to a finite group of subscribers based on community location unless the operator agrees to the request, it must not provide such limited carriage to other programmers or channels. To the extent the cable operator denies the request for limited carriage, the cable operator must provide an explanation as to why it is technically infeasible to provide such carriage. If limited carriage is technically feasible, the cable operator must provide a fee and cost breakdown for such carriage for comparison with similar coverage provided for non-leased access programmers."

A number of cable operators have established advertising zones in which prospective advertisers can run commercial inserts over various channels. Many of these zones are quite adequate for running local community focused programming as they are made of cities and towns or other political subdivisions that have common interests and issues that are the same.

LAPA believes that a cable system operator should not unduly deny limited area carriage if all is needed is a modulator or other piece(s) of equipment, if the programmer is willing to pay the reasonable cost of that equipment.

LAPA further requests that the Commission adopt the expedited time frames for resolution of complaints and improve the discovery process as what was called for in the 2008 Leased Access Order. There is no reason not to as these are not the subject of the OMB disapproval, nor are they of concern with regard to the Sixth Circuit Court of Appeals.

LAPA requests that the Commission eliminate the requirement for a complainant alleging that a leased access rate is unreasonable to first obtain a determination of the cable operator's maximum permitted rate from an independent accountant prior to filing a petition for relief with the Commission per the 2008 order. This was a Commission imposed requirement and the record has shown that it has not worked as intended. This would impose no burden on the cable operators.

While LAPA would like to see some sort of reporting of leased access statistics. The Commission, should consider ways that this can be done in a manner consistent with the OMB and minimize the impact on cable operators.

With respect to the revised rate methodology adopted in the 2008 Leased Access order. While LAPA believes that there is good reason to revise the rate methodology to address the concerns of the Commission and the commenters in that proceeding, there should be a better approach to it. This issue drew the most dissent from cable system operators and was probably the main concern which drove the Sixth Circuit Court of Appeals to issue the Stay Order. At immediate contention was the provision of setting the maximum allowable leased access rate of $0.10 per subscriber per month to ensure that leased access remains a viable outlet for programmers. With this and the new rate methodology, some cable system operators claimed that they would be selling the service at a loss. This issue also raised the concerns of the Commission, as evidenced by their statements in which they basically concluded that they acted a little to hastily, leaving some of the Commissioners to dissent on this order. The Commission should issue a new order seeking public input on this issue from cable system operators, leased access users and other interested parties in a way to address the concerns of the Commission back then, and yet address the concerns of cable systems operators and the Sixth Circuit Court of Appeals.

In summation, LAPA believes there is no reason to vacate the entire order as proposed by the current Commission and start fresh. Much thought, effort and comments went into the previous proceeding. The proceeding was born out of the Adelphia transaction and proceeding and sought to address the concerns of the Commission regarding leased commercial access and encourage its use as a "genuine outlet" for diverse sources of programming as intended by Congress. The basis, concerns, goals and need for the proceeding remain true today as back then. It is reprehensible that it taken 10 years to address this matter.

There is a need for definable customer service obligations from cable systems operators and provide for equal treatment of leased access programmers with other programmers. There is a need for speedier and easier resolution of the complaints process, there is a need for some reporting of leased access statistics, there is a need for a new "equitable" rate methodology. Therefore, LAPA respectfully request the Commission adopt the parts of the order that do not require the approval of the OMB, nor have been listed as concerns of the Sixth Circuit Court of Appeals. The Commission should also issue a further notice of proposed rulemaking or do a staff review of the issues of concern to the OMB, if they can be modified, relaxed or amended to satisfy the OMB or overrule the OMB where needed. The Commission should also issue a FNPRM seeking further input on the rate methodology, in a manner which would be equitable to cable system operators and leased access users and address the concerns of the Sixth Circuit Court of Appeals. We also do note that the Sixth Circuit Court of Appeals had also noted NCTA's argument that cable operators would suffer irreparable harm absent a stay because the new leased access rate formula adopted in the order would set leased access rates at an unreasonably low level, which would lead to more leased access requests that would displace other programming, ultimately leading to dissatisfied cable customers makes absolutely no sense. This argument is ludicrous, as per law they are required to set aside a certain number of channels (up to 15% of their capacity in most cases) for use by leased access. To say that the actual use of the channels they are required to provide would cause irreparable harm to cable system operators is absolute rubbish. If that were the case, perhaps they should challenge the amount they need to set aside. Thus, some of the reasoning that the Sixth Circuit Court of Appeals used in issuing the stay order is suspect. There are many benefits of the 2008 order that encourages the use of leased access. The benefits far outweigh the costs. Without these benefits, the use of leased commercial access in a manner intended by the Cable of Act of 1984 and Congress will continue to be underutilized, due to continuing uncertainty of a reliable business environment, subject to the whims and folly's of certain cable system operators and various methods to roadblock prospective and actual use of leased access because they don't want to be bothered by it.

If the Commission declines this request and vacates the entire order as proposed. LAPA request that the Commission expand this proceeding to be able to address all the variables raised in the 2008 order.

With respect for other items brought up in this current proceeding, in regards for the proposal that all operators would only have to respond to bona-fide leased access request to provide information. There is a difference between a request for information and a need to submit a bona fide leased access request. There is a need for certain general information to determine whether or not there is a reason to proceed with a leased access request.
Most of this information is standardized and can be posted on a website or can be put into and pdf document and e-mailed to requester. When a prospective user has sufficient information to determine that they are ready to move forward and need more detailed information such as a sample contract, detail rate information, tier placement etc., that would take more effort to compile or mail, that should be submitted in a more formal (bona-fide) leased access request. The Commission should reach a more equitable solution to respond. 3 days may not be enough, but 30 days is too long. In no case should, it take more than 15 days. We see no difference between bona-fide requests for small system operators and large system operators. In no case, should a prospective leased access user be discouraged in exercising the right to use leased access, by making it difficult to obtain information needed to make such a decision.

We oppose any attempt to eliminate part-time leased access. Many small operators can only start out affording leased access on a part-time basis. Many may only want to air a program that on an hourly or weekly basis. To eliminate part time leased access, would eliminate many programmers, completely contravening the intention of Congress.

We also oppose any attempt to require a deposit or nominal fee to obtain or request leased access information including bona-fide requests. Does any business require you to provide a deposit or pay for information to decide if you want to do business with them, to cover the cost of providing such info. This is called marketing, which is a known business expense. I am sure the cable system operators would gladly supply rates, contract information, areas served, etc. to requesters of information for advertising inserts on the cable system without requiring a deposit. Why should requests for leased access information be any different? The Commission has rejected deposits/fees in the past and should continue to so, by soundly rejecting this attempt. These request by cable system operators only underscore the difficulties that prospective leased access user face and they need for such rules that were adopted in the 2008 order.

We also take a strong issue with consideration of the various methods of programming distribution that has increased diversity and competition that have come into being since the Cable Act of 1984 was enacted and whether or not they can be substituted as a “valid” source of distribution in lieu of commercial leased access. We contend that DBS or satellite delivery of programming is not a viable method for use by independent programmers, not only due to the costs or access to, but it has no validity or option to provide locally focused programming. The viability and practicality of using the internet as a method to distribute diverse sources of programming has improved considerably over the last number of years and may someday replace cable. However, in the meantime, it still has a long ways to go, to provide the ("experience of cable") by simply turning on your TV, flipping to a channel by remote and receiving a steady and reliable picture and sound. For now, the internet can't duplicate that, yet it can serve as an additional method of distribution to potential viewer(s), especially to those that are tech-savvy, cut the cord, etc. Cable companies are doing an excellent job at shooting themselves in the foot, by continuing policies and practices, raising prices, etc. that encourage cord cutting, When cable goes the way of the "dodo bird", leased access users will have to rely on the internet. The policies put in place with the Cable Act of 1984 have only to do with providing diverse sources of programming via cable.

The Commission should also consider clarifying or codifying rules and policies with respect to insurance requirements. The Commission has permitted cable companies to require that all leased access users provide an errors and omission insurance policy (general liability) to protect the cable system operators in event of a claim. It has left open the interpretation of various matters with respect to these requirements on a case by case basis. In any event, the policy of the Commission and reinforced in several CSR's is that the burden of proof is on the cable system operator to justify any requirement in question.
In a recent case, Cox Media denied the request of Stogmedia to provide leased access carriage of the programming of its affiliate on the Las Vegas system. In this case, the affiliate produced programming for a one hour show. After months of discussion, Cox demanded that the affiliate be named as an additional insured on the Errors and Omission policy provided by Stogmedia. This same policy has been used by StogMedia to successfully obtain leased access carriage on a number of systems. To add its affiliate to the policy as an additional insured would have required additional expense, complications, etc.. StogMedia responded to Cox saying that the burden of proof was on them to provide justification for this requirement, which is nothing more than what a lawyer dreamed up. Cox failed to respond and denied carriage and ended discussion. StogMedia was forced to file a "Petition for Relief" and again requested that Cox provide the justification in direct accordance with Commission policy. Cox responded by laughing and deriding the Petition for Relief and completely ignored the requested justification in direct contravention with Policy Commission. The Commission denied the Petition claiming that StogMedia did not meet or prove the insurance requirements when in fact they did. So why have this policy when the Commission completely ignores it and rules in favor of the cable company which it has done, so many times. Stogmedia suffered a significant loss in this matter and its is no wonder why the use of leased access is low. By requiring the producer of a program to be named as an additional insured, opens a large can of worms. Should this then not be applied to every producer of every program, commercial, etc. aired on any channel of the cable system? The bottom line here is when has a cable company been subject to a claim, due to running a leased access program on its system(s). My guess is never. So why have

such a policy in this first place Just creates an additional expense, discourages use of leased access and serves as another roadblock.

The Commission should also clarify and codify its polices with respect to tier placement, how did it go from a tier that is available to most users to a tier that is available to 50% of the subscribers.

In addition, the Commission should clarify and codify its policies, channel placement, geographic levels of service (to what is technically possible) i.e. where it is provided to other programmers including PEG, local origination or private channel, methods of delivery, including the use of modern methods such as the internet and digital equipment. The 2008 Order was a good start and it should not be tossed aside completely.

We should also not ignored low power TV stations that provide valuable programming and community service, that have far too long been ignored by cable and struggled to stay afloat, because the advertiser cannot see his commercial, because he has cable and believes everyone else does. Affordable leased access would go a long way towards helping such operators and there would be many more of these operators had the 2008 order gone through. The Commission has particulary focused on selling off TV channel spectrum getting rid of a number of opportunities or avenues to provide local community programming. The Commission should not kill off leased access as another method of providing such.

We reject any claims or attempts by the cable companies that the leased access requirement is a direct violation of their First Amendment Rights. This matter has been previously resolved by various cases as noted in the 2008 leased access order.

The Commssion should review how many aspiring leased access users were killed off by the expense, hassle of dealing with cable systems and their myriad requirements such as insurance, contract issues, etc. frustration at their ignorance of leased access and the rules and/or of the Commission rulings, policies and actions with respect to leased access.

LAPA believes that commercial leased access is viable business. That its business model is sound (i.e. paying for carriage rather than being paid for programming) despite what some Commissioners would think. Leased Access provides a source to air diverse programming including local community programming that helps the well being and enriches the various communities, and also promotes and enhances democracy which is the backbone of our nation. The Commission should review the various cable acts and the rules regarding leased access, why it was established, what and why Congress intended it to be and what they expect from it and then review its policies and procedures, staff actions, etc., and promote the use of leased access rather than hinder it. We note the comments of Commissioner Michael O'Reilly in this proceeding who appears to have his hands in the cable companies pockets and would rather kill off leased access. We suggest that the Commission follow the directives of Congress, who provide their paychecks and not the cable companies. We seek a level playing field and equitable treatment by the cable system operators and the FCC and seek policies and procedures that treat cable system operators and leased access users fairly.

Respectfully Submitted,

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